bah J. had in mind the wording of the section as it read prior to its amendment. The differences in wording between the old section and the new section, however, would appear to have no bearing on the present case and therefore do not call for discussion.

In my view the present case comes fairly and squarely within the scope of section 80. Here there has been an assessment. There has been an appeal and the assessment has been "determined on appeal". In the circumstances the section requires that it shall be treated as final and conclusive.

At one time there would appear to have been some suggestion that the appellant had it in mind to attempt to have his tax liability settled by the Court by way of a suit for a declaration. I express no view one way or the other as to whether it was open to him to do so. Nor do I express any opinion as to whether it is or has been open to him to proceed by the issue of one of the prerogative writs. I only observe that he has made no attempt to do anything of the sort during all the years his dispute with the Income Tax authorities has been going on.

What we are concerned with here is not a hypothetical declaratory suit or a hypothetical prerogative writ but actual proceedings taken against the appellant by the Comptroller. In my view section 80 concludes these proceedings and the appellant's affidavit discloses no available defence to them.

I would add that it is impossible to feel any sympathy with the appellant. This is not a case of an ignorant taxpayer having to fight against the resources of a powerful Government Department. The appellant has at all times been legally represented. In spite of that he has throughout either been reluctant or has refused to avail himself of the remedies provided by the Ordinance. He did not go to the Board of Review until proceedings had been commenced against him and then when his appeal to the Board of Review had failed he did not avail himself of his remedy of appealing to this Court against the decision of the Board.

In all the circumstances I would dismiss the appeal with costs.

Hill and **Good JJ.A.** concurred.

Appeal dismissed.

Solicitors: *Gibb & Co.; Chang Min Tat.*

ZAKARIA & ORS. v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Hill and Good JJ.A.) August 15, 1962]

[K.L. — F.M. Criminal Appeal No. 28 of 1962]

Criminal Law and Procedure — Trial by jury — Objections to jurors — Objection without grounds — Joint trial — Criminal Procedure Code (Cap. 6), s.206(ii).

Where three persons are charged jointly and are about to be tried jointly each of them is entitled to object to four members of the jury panel without showing cause.

Case referred to:—

(1) *R.* v. *Williams* 19 Cr. App. R. 67.

COURT OF APPEAL (CRIMINAL).

Wan Mustapha bin Haji Ali for the appellants.

Harun Hashim (Deputy Public Prosecutor) for the respondent.

Thomson C.J. (delivering oral judgment): These appellants were tried for an offence of murder in contravention of section 302 of the Penal Code. In the event they were convicted for culpable homicide not amounting to murder in contravention of section 304 and each of them was sentenced to seven years' imprisonment. Against these convictions they have appealed on a variety of grounds.

We find it necessary to consider one of these grounds only.

That ground arises from something which happened at the commencement of the trial. Counsel who was representing all three prisoners proceeded to exercise the right of peremptory challenge as the jury were being chosen. He challenged four of the panel and was then stopped and was told that his clients' rights of challenge were exhausted.

This was clearly wrong.

Section 206(ii) of the Criminal Procedure Code which deals with the question of challenging jurors says:—

"Objections without grounds stated shall be allowed to the number of four on behalf of the person or each of the persons charged."

On that where, as in the present case, three persons are charged jointly and are about to be tried jointly each of them is entitled to object to four members of the jury panel without showing cause. The present appellants were denied that right and therefore we are compelled on the authority of a very long series of English cases of which it is only necessary to mention *R.* v. *Williams* (1) to hold that the trial was a nullity.

In the circumstances we have no option but to set aside the convictions and to state the ground on which we do so. The question of what happens subsequently is at this stage no concern of ours. There has been no trial and it is for the Public Prosecutor to take such steps as he sees fit.

Conviction set aside.